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Issue Date: 31 January 2005

In the Matter of

CASPER A. KNIGHT
Claimant
v.
ATLANTIC MARINE, INC.
Employer
And
SOMERSET INSURANCE SERVICES OF TEXAS
Carrier
And
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS
Party in Interest

Case No. 2002 LHC 00219
OWCP No. 6-166878

Supplemental Final Order

Medical treatment

On March 11, 2003, a Decision and Order issued in this matter which awarded Claimant benefits for temporary total disability arising out of a May 8, 1995, left knee injury. The order entered at that time, provided, in part, as follows:

> 6. IT IS FURTHER ORDERED that the Employer shall, within 45 days of the date of this order and in consultation with Claimant, schedule him for evaluation, care, and treatment by or under the supervision of Dr. Michael Stanton-Hicks at the Cleveland Clinic, Cleveland, Ohio....
>
> 8. IT IS FURTHER ORDERED that the Employer shall not reduce the care, treatment, medications, home

> aid, or other benefits Claimant received at the time of the hearing or as set forth in Paragraph 4 of this order, until such time as Claimant is admitted at the Cleveland Clinic, after which, all medical benefits previously provided shall be suspended and replaced, at Employer's expense, by the medical evaluation, care, and treatment, including but not limited to medications provided or prescribed by the Cleveland Clinic during his admission, and as the Cleveland Clinic, or other medical provider acting upon the Clinic's recommendations, may thereafter prescribe, including but not limited to medications, treatments, transportation, and home attendant care, if any, upon Claimant's return home; and
>
> 9. IT IS FURTHER ORDERED that… Claimant shall … undergo such evaluation, care, and treatment as the staff of the Cleveland Clinic, under the supervision of or in consultation with Dr. Stanton-Hicks, may prescribe, including psychological or psychiatric evaluation, care, or treatment; provided, however, that Claimant shall not be required to submit to any evaluation, care or treatment, which is contrary to the tenets of the Jehovah's Witnesses, and provided further that nothing in this order shall be construed as requiring Claimant to submit to any implant procedure pending appropriate review of the reasonableness of any objections he have to such a procedure….

Claimant now suggests that the decision to seek Dr. Stanton-Hicks input in this matter represented the "court's intervention in his medical care and treatment;" however, the record shows that both parties, including Claimant and his treating physician, who described Dr. Stanton-Hicks as the "one of the world's most renowned….writers on RSD," persuasively pleaded for an opportunity to visit with Dr. Stanton-Hicks. As noted in the March 11, decision:

> Suspicions and recriminations aside, there is in this record a convergence confidence expressed at various times by both parties in one facility above all others. For the care and treatment of RSD/CRPS, the resources of the Cleveland Clinic are unsurpassed. Legal and collateral non-medical

> strategies and considerations have, in the past, imposed obstacles to securing the needed expertise as the parties bobbed and weaved, jousting for position, both, at times, demanding, and, at times, objecting to a visit to the Cleveland Clinic, but through it all, neither party questioned the singular expertise available at that facility, and the time for sparring is now over.
>
> The record shows that at various times Claimant and the Employer sought approval from the other for a voluntary visit with Dr. Stanton-Hicks. Claimant, in particular, made an especially poignant plea for an order compelling the employer to authorize such an evaluation.

In his pleadings filed before Judge Teitler on October 21, 2001, Claimant implored:

> On July 7, 1998, Dr. Jacob Green, the Claimant's treating physician, referred the Claimant for evaluation with Stanton Hicks M.D., located at the Cleveland Clinic, Cleveland, Ohio. (Deposition Dr. Green 8/13/99, p.52, 53). Dr. Hicks is a professor and head of pain services at the Cleveland Clinic, and is an internationally known expert in RSD. (Deposition Dr. Green 8/13/99, p. 52, 53, 61, 62). Dr. Hicks has written extensively on the topic of RSD and is "one of the world's most renowned and prolific writers on RSD." (Deposition Dr. Green 8/13/99,p. 53, 61). Dr. Green wishes the Claimant to see Dr. Hicks given the rarity and the severity of the Claimant's condition, to determine whether Dr. Hicks can add treatment ideas to attempt to improve the Claimant's condition. (Deposition Dr. Green 8/13/99 p. 57, 49). "I think [the Claimant] should be given every chance because of the amount of pain and difficulty he has." (Deposition Dr. Green 8/13/99 p. 59). "If he was your kid or my kid, I'd think we'd want him to go see the world's greatest expert and see if there's anything at all that they would come up with that hasn't been tried." (Deposition Dr. Green 8/13/99, p. 49)." Cl. Br. At p. 10 10/21/01.

At the hearing in this matter, Claimant's counsel advised that Claimant no

longer wanted to seek Dr. Stanton-Hicks' help, but the circumstances described by Dr. Green were as applicable, if not more compelling in March of 2003 than in October of 2001. Accordingly, it was determined based upon the medical opinions in evidence that a visit to the Cleveland Clinic for such evaluation, care, and treatment as Dr. Stanton-Hicks deemed appropriate for Claimant's condition was in Claimant's best medical interest. Subsequently, appropriate arrangements were made, and Claimant was seen by Dr. Stanton-Hicks.

In his Motion for Clarification filed October 27, 2003, Claimant attached a letter from Dr. Stanton-Hicks in which Dr. Stanton-Hicks reported that he saw Claimant on June 5, 2003. He reported that Claimant told him his pain was located primarily in his left knee, and that Claimant noted "extreme sensitivity to the skin over the knee and the leg that restricts the use of clothing and bed covers." The nature, severity, and scope of the pain Dr. Stanton-Hicks reported Claimant described to him contrasts markedly with the excruciating total body pain symptoms described by Claimant at the hearing, *See* D&O pgs. 3-6, in testimony that was found lacking in credibility. *See* D&O pgs. 30-44. Considering the symptoms reported to him and the results of his examination, Dr. Stanton-Hicks diagnosed an internal derangement of the knee, with "questionable superimposed symptoms of complex regional pain syndrome.…" It was Dr. Stanton-Hick's opinion that Knight should undergo a QSART and cold pressor test with thermographic imaging, and start treatment with Zonegran and exercise therapy. Dr. Stanton-Hicks further opined that "if a neuropathic component is established," a trial of neurostimulation may be appropriate.

As noted in the Decision and Order, the evidence adduced by the Employer at the hearing failed to rebut the presumption that Claimant has CRPS in his left lower extremity related to his original injury or the subsequent left knee surgery, but the Employer did adduce substantial countervailing evidence which rebuted the presumption that Claimant's RSD or CRPS had migrated beyond his left lower extremity or involved brain, cardiac, immune system, or dermatological conditions. (*See*, reports and testimony by Drs. Koslowski, Hardy, Pulley, Eichberg, and Barsa). Since the presumption of migration of Claimant's conditions beyond the left lower extremity had been rebutted, the record as a whole was evaluated to determine whether Claimant had sustained his burden of establishing the nature, extent, and etiology of conditions which effected him in areas other than the left lower extremity. While Drs. Green, Hooshmand and Hashmi, Rowe, Fralicker, and Ashchi opined that Claimant's CRPS had migrated to areas other than his right knee, and Dr. Roura attributed a calcium problem to RSD; Drs. Tandron and Hardy, Kowlowski and Erbug, Weidenmann, Vincenti, Lord, Pulley, Eichberg, and

and Barsa either doubted that Claimant had any CRPS or if he did it was limited to his left lower extremity.

The record showed that the physicians, including Drs. Green and Hooshmand, although Knight's treating physicians opined that his CRPS migrated to other parts of his body based, in large measure, upon the severe, whole body subjective symptoms that Claimant reported to them. As the decision discussed in detail; however, Claimant's subjective complaints were not credible, and the medical opinions which relied upon his subjective complaints were diminished accordingly. As such, and based upon the medical evidence adduced at the hearing, Claimant failed to satisfy his burden of establishing that his May 8, 1995 injury resulted injury beyond his left lower extremity. Nothing in Dr. Stanton-Hicks report would warrant disturbing that conclusion. Indeed, he considered it questionable that Claimant had CRPS in his left leg let alone anywhere else.

Accordingly, Dr. Green is treating symptoms and alleged residuals that have not been established in this proceeding as arising out of the May 8, 1995 accident. Thus, the record in this matter, as discussed in detail in the March 11, 2003, decision failed to establish that the injury or surgery resulted in CRPS, RSD or other residual in any area other than his left lower extremity. Conversely, Knight's left leg complaints, which have been accepted as unrebutted residuals of his job-related injury, were specifically evaluated by Dr. Stanton-Hicks based upon his examination, and Dr. Stanton-Hicks did recommend a course of care and treatment consistent with the diagnosis he rendered, which, I should emphasize, was entirely consistent with the scope of the injury found in the Decision entered in this case on March 11, 2003.

Now Claimant criticizes the duration and scope of Dr. Stanton-Hicks' examination and evaluation; and emphasizes that he was sent to see Dr. Stanton-Hicks not just for evaluation but for care and treatment, and the Cleveland Clinic provided none. The opportunity to consult with one of world's renowned writers on RSD was provided to Claimant upon the strong recommendation of his treating physician, and the Employer was ordered to provide the care, treatment, and medications, the transportation, home attendant care, and such facilities and devises that the Cleveland Clinic prescribed or recommended while he was at the Clinic or thereafter upon his return home. There is no reason to conclude that Dr. Stanton-Hicks or the Clinic did anything less than Claimant's reported symptoms and Dr. Stanton-Hicks' examination indicated was appropriate under the circumstances. The Order did not purport to define a course of action Dr. Stanton-Hicks should follow, it merely ensured that the Employer would be required to

provide all of the medical testing, care and treatment Dr. Stanton-Hicks deemed appropriate.

Because the medications and treatment Claimant was receiving were not only questioned as excessive in testimony by several physicians who reviewed his treatment but were prescribed based, in part, upon Claimant's subjective complaints that were not credible, Claimant failed, on this record, to establish his entitlement under the Act to all of the medication and treatment he receives. Dr. Stanton-Hicks provides a course of care and treatment for the condition and the symptoms that are consistent with the scope of the injuries established on this record.

Accordingly, pursuant to Paragraph 9 of the Order issued on March 11, 2003, the Employer will be required to provide the medications included in the Cleveland Clinic's report, if prescribed by Claimant's treating physician, and such tests treatments and therapies as suggested by Dr. Stanton-Hicks, if deemed appropriate by Claimant's treating physician. Claimant's treating physician may, of course, accept or reject Dr. Stanton-Hicks' recommendations, in whole or in part; however, the Employer will not be required to provide any treatment or medications other than those included in, or generic substitutes for those in, the Cleveland Clinic's report, for Claimant's current job-related condition, pending further tests and studies recommended by Dr. Stanton-Hicks.

Out-of Pocket Expenses

Claimant also contends that the March 11, 2003 Order required the employer to pay Claimant's out of pocket expenses during the period benefits were suspended from September 20, 2001 to January 4, 2002. Claimant asserts that the employer has failed to comply since it reimbursed his medical expenses during this period not based upon his out-of-pocket expenses but based upon a medical provider fee schedule. Employer responds that it has reimbursed Claimant for all of the out-of-pocket expenses he incurred during this period.

Claimant is correct that the order requires employer to pay his injury- related medical expenses during the period his benefits were suspended. Claimant is further correct that the Order does not permit Employer to pay less than his out of pocket expenses based upon a fee schedule that the Employer might have applied had it not suspended benefits. Claimant was improperly left on his own during this period, and the Employer cannot extract from the Claimant the savings it could have achieved had Claimant not been left to fend for himself. Yet, Employer

replies that it has reimbursed Claimant for his out-of-pocket expenses, and that Claimant has failed to document that he actually paid expenses which the employer has not covered. Because Claimant has failed to document with receipts unreimbursed payments of out-of-pocket expenses covered by the order, his motion to compel will be denied. For payments not covered by the period of the suspension of benefits, Claimant must seek relief from the District Director. Similarly, Employer's motion for an IME will be denied. Requests related to confirmation or changes in Claimant's disability status, functional capacity, or wage earning capacity may be addressed to the District Director.

Interest and Penalties

Claimant contends that he is entitled to interest and penalties for late payment of compensation benefits. Payments made by the Employer pursuant to the order for compensation due during the period benefits were suspended have included penalties and interest. Claimant contends, however, that several checks were not provided to him in 2001, and thereafter, subsequent checks should be credited to the prior period rendering every subsequent check late. Employer asserts that the four checks in question were issued on April 24, May 11, July 12, and August 31, 2001, and were mailed but not negotiated by Claimant. Citing the affidavit of Ana McManus, Employer contends that except for the period of suspension, "Atlantic Marine has issued timely payments of disability benefits every two weeks. *See* Exhibit Z (Affidavit of Ana McManus…)." Atlantic Marines' Reply pg. 29.

A careful reading of McManus' affidavit reveals that she makes no mention of any payments allegedly issued in 2001. Exhibit Z. Her responsibility for issuing checks commenced on April 9, 2002. Consequently, other than the assertions of counsel, there is no evidence that the any of the four checks actually issued, but the record does confirm that the allegedly issued checks were not negotiated and that replacement checks were not received by Claimant until March 24, 2003. Under these circumstances, I conclude that the original checks, for reasons not reflected in the record, failed to issue. Accordingly, penalties amounting to 10% of each of the 4 installments paid late shall be added to the amount of the compensation for each of the four late installment along with interest from the date the late payment was due in 2001 until the date it was paid.

Finally, four petitions for approval of fees and costs totaling $355,193.12 have been filed in this matter. These will be addressed in a separate order. Accordingly;

ORDER

IT IS ORDERED that, pursuant to Paragraph 9 of the Order issued on March 11, 2003, the Employer shall provide the medications, tests and therapies included in the Cleveland Clinic's report, if prescribed by Claimant's treating physician, and such tests, treatments and therapies as suggested by Dr. Stanton-Hicks, if deemed appropriate by Claimant's treating physician, and;

IT IS FURTHER ORDERED that Claimant's treating physician may accept or reject Dr. Stanton-Hicks' recommendations, in whole or in part; however, the Employer will not be required to provide any tests, treatments or medications other than those included in, or generic substitutes for those in, the Cleveland Clinic's report for Claimant's current job-related condition; provided further that nothing in this order shall be construed to limit or preclude the District Director, in his discretion, from scheduling at the Employer's request, such medical tests, vocational, psychological or functional capacity studies or tests consistent with medically appropriate evaluations of Claimant's continuing temporary total disability or residual wage earning capacity, if any, and;

IT IS FURTHER ORDERED that the Employer pay to Claimant penalties amounting to 10% of the compensation for each of the 4 installments due in 2001 along with interest from the date the installment was due until the date the installment was paid on March 24, 2003, and;

IT IS FURTHER ORDERED that Claimant's Motion to Compel payment of undocumented out-of-pocket expenses, Motions for Clarification, and other relief be, and they hereby are, denied.

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Stuart A. Levin
Administrative Law Judge